

Newark

Sharpe James
Mayor

Department of Administration

920 Broad Street
Newark, New Jersey 07102
973-733-3780
Fax 973-733-3769
www.ci.newark.nj.us

JoAnne Y. Watson
Acting Business Administrator

TO: ALFRED FAIELLA, DEPUTY MAYOR/DIRECTOR
DEPARTMENT OF ECONOMIC AND HOUSING DEVELOPMENT

EVELYN LACCITIELLO
TAX ASSESSOR

M.C. ALEXANDER, MANAGER
DIVISION OF SPECIAL TAXES

FROM: JOANNE Y. WATSON
BUSINESS ADMINISTRATOR

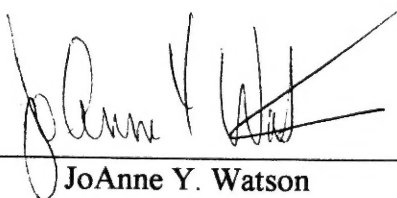
DATE: JULY 28, 1999

RE: ENVIRONMENTAL OPPORTUNITY ZONE

This office has completed its review of the Environmental Opportunity Zone (EOZ) Application that was developed by the Brownfields Working Group in consultation with the relevant City officials. The enabling legislation does not require Council review of the form of the application prior to the start of the program. Therefore, I am authorizing the implementation of the EOZ process beginning September 1, 1999. A copy of the application package as it was submitted to me is attached for your convenience.

Please insure coordination of this process to insure that applications are processed uniformly and efficiently. Keep me apprised of the status of the procedure, and of any applications that are to be processed under the EOZ regulations. The Deputy Mayor for Economic Development is further requested to coordinate a press release and/or event with the Public Information Office.

Thank you for your cooperation.


JoAnne Y. Watson

Attachment

C: Mayor Sharpe James

Pamela Goldstein, Manager, NPIO ✓

Howard Lazarus, Director, Department of Engineering

JYW/JBC

**CHECKLIST FOR SUBMITTAL OF
ENVIRONMENTAL OPPORTUNITY ZONE TAX EXEMPTION APPLICATION PACKAGE
TO CITY OF NEWARK, NJ**

NOTE: CONFIRM THAT EACH ITEM THAT IS A PART OF YOUR SUBMISSION. YOU MAY WANT TO ATTACH A COPY OF THIS CHECKLIST WITH YOUR APPLICATION.

1. **Eight copies** of the "Application for Newark Environmental Opportunity Zone Tax Abatement"
2. Survey of site property or plotting from latest tax map
3. Metes and Bounds description of the site property
4. Articles of Incorporation or Partnership Agreement
5. Applicant's certified financial statements for the most recently completed year of operation
6. Applicant's site must be included on NJDEP's Known Contaminated Site List – Include copy of portion of list with referenced site
7. **Four copies** of the Memorandum of Agreement (MOA) or Administrative Consent Order (ACO) executed between the applicant and the New Jersey Department of Environmental Protection (NJDEP) with regard to the property, including NJDEP Remediation Work Plan.
8. Corporate resolution authorizing submission of application and execution of all documents by a specific individual related to this project
9. Affirmative Action Plan (in compliance with requirements of the City of Newark)

APPLICATION FEE: \$2,000 non refundable fee. No application for tax abatement submitted shall be accepted unless it is accompanied by full payment of the required application fee. Such fees shall be in the amount stated in Ordinance Title 10, Chapter 16 of the City of Newark. These fees shall be received as compensation for the legal review and related work of the City's departments and agencies. The fee must be paid by certified check only made to the City of Newark.

SUBMISSION: All copies of Applications for the Newark Opportunity Zone Tax Exemption cited above shall be submitted to the Division of Tax Abatement & Special Taxes either in person or by mail, at his office along with the appropriate application fee (by certified check only made out to the City of Newark).

EOZ APPLICATION REVIEW PROCEDURE

Distribution of Application: Upon receipt of any application, the Division of Tax Abatement and Special Taxes shall forward one copy of the application to the individual designated by the Mayor as Director of the Department of Economic and Housing Development, one copy to the Director of the Department of Finance, one copy to the Tax Assessor, one copy to the Tax Collector, one copy to the Department of Engineering and three copies to the Corporation Counsel. The final copy, of the application shall be retained by the Manager, Division of Tax Abatement and Special Taxes and shall be placed on permanent file within that office.

Economic and Development Review: Upon receipt of an application, the Director of the Department of Economic and Housing Development shall conduct a complete review of the proposed project. Such review shall consider the propriety and suitability of the description, plans and estimates submitted, the degree to which the project complies with the City's developmental goals as expressed in its zoning ordinances, its master plan and any applicable redevelopment plans, and the degree of economic necessity for tax abatement consideration.

Legal Review: Upon receipt of an application, the Corporation Counsel shall conduct a review as to the form and legality of the application. In addition, the Corporation Counsel shall obtain written certifications from municipal officials as necessary to substantiate the items contained within the application.

At a minimum those certifications shall include the following:

- i. Certification of the Tax Assessor of the precise identity of all real property included within the project, including its metes and bounds, all tax block and lot designations and corresponding street addresses, as well as a survey or plotting of such property on the official tax map.
- ii. Certification of the Tax Assessor as to the owner of record as recorded in the Assessor's office of each tax lot included within the project.
- iii. Certification of the Tax Assessor as to the assessments for land and improvements then in effect for each tax lot included within the project.
- iv. Certification of the Tax Assessor as to the total amount assessed on all property included within the project in the calendar year immediately preceding its acquisition by the City, the City's agent, or the developer or developer's agent.
- v. Certification of the Tax Collector as to the taxes levied on the real property included within the project in both the year in which the application was filed and the immediately preceding year.
- vi. Certification of the Tax Collector as to the current status of payments due for property taxes and/or municipal liens of any type arising from the real property included within the project.

vii. Certification of the Manager of the Division of Tax Abatement and Special Taxes as to the current status of payments due for any tax abatement agreement then in force and effect to which the developer is a party. Also, certification as to the status of license and permits and payments due for license and permits for any activity conducted on the real property within the project.

viii. Certification of the Director of the Division of Water Accounting and Customer Service as to the status of payments due for water and/or newer services provided to the real property included within the project and as to other real property within the City in which the developer has an interest.

ix. Certification of the Secretary to the Board of Adjustments that the use proposed for the project conforms to the zoning ordinance of the City.

x. Certification of the Secretary of the Central Planning Board, if applicable, that the project is located within an area which has been properly designated as blighted by the City.

xi. Certification of the Secretary of the Central Planning Board that the project has received final site plan approval from the Central Planning Board

xii. Certification of the Construction Code Official that the proposed project is in the rules and regulations of the Uniform Construction Code.

The Corporation Counsel shall also review those abatement agreements then in force and effect to determine the extent to which any party holding an interest in the application is a party to any other agreements.

Upon receipt of the necessary certifications and the review thereof, the Corporation Counsel shall make a determination as to the propriety of the application. Applications shall be deemed proper in those cases where they are presented in the proper form, satisfy the requirements of the applicable municipal ordinances and applicable statutes, and for which no delinquency has been found in any of the payments due to the City as certified by those officials indicated above.

In those case where an application is deemed proper, the Corporation counsel shall prepare a resolution in the form necessary to authorize the tax abatement and shall prepare the form of the agreement which would so authorized. All such agreements shall be in the form filed with the City Clerk at the time of adoption of this ordinance. The resolution shall be signed by the Corporation Counsel as to form and legality and submitted, together with the form of the agreement, the original application, the certifications, and the recommendation of the Director of Finance and the development officer, to the Mayor for his recommendation.

In those cases where an application is deemed improper, the Corporation Counsel shall prepare correspondence outlining those aspects of the application to be deficient and shall forward that correspondence, together with the original application, the certifications, and the recommendation of the Director of Finance and the development officer to the mayor for his recommendation.

Municipal Council Consideration: Upon receipt of any resolution to authorize a tax abatement agreement, the Municipal Council shall not place such resolution on the calendar for consideration, but rather shall refer the matter to its Tax Abatement Committee for consideration. That Committee shall review the resolution, the original application, the certifications, the recommendations, and the form of the agreement to ensure that the considerations of this ordinance have been met. Where the matter is determined to be in proper form, the committee shall further determined its recommendation as to whether the authorization of the abatement is in the City's best interest.

The committee shall report its findings to the Municipal Council and shall place the matter on the Council's calendar for consideration. Upon consideration, by vote of a two-thirds majority of the membership of the Council, the resolution may be approved, rejected or returned to administration for correction or change. Determinations of rejections by the Council shall be treated as outlined for rejections by the mayor. An application rejected conditionally may be re-submitted to the Division of Tax Abatement and Special Taxes without fee for reconsideration, while one rejected unconditionally may only be re-submitted as a new application, with fee.

The agreement shall further provide for the annual adjustments and the amount of the consideration to be paid to the City as has been determined by the Council at the time of the adoption of this resolution and has been reflected in the form of the agreement as filed with the City Clerk at that time.

CITY OF NEWARK
APPLICATION FOR NEWARK ENVIRONMENTAL OPPORTUNITY ZONE TAX EXEMPTION
Pursuant to N.J.S.A. 54:4-13.150 et.seq.

Application No. _____

A. GENERAL INFORMATION

Name of Applicant (official without abbreviations): _____

Contact Person: _____

Street Address: _____ City: _____

State: _____ Zip Code: _____ Date of Application: _____

Phone Number: _____ Fax Number: _____ Federal ID# _____

Applicant's Business Organization: Corporation _____ Partnership _____ Sole Proprietorship _____
Other (describe): _____ If incorporated, in what state chartered? _____

Is the applicant a subsidiary or direct or indirect affiliate of any other organization? ____ Yes ____ No
If yes, indicate name and address of related organization and relationship. (Use separate page if needed and include as Exhibit 1B)

List 100% ownership including all officers, directors and partners of the applicants. Please attach articles of incorporation or partnership agreement. If the applicant is a publicly-held corporation, please provide the latest proxy statement including stock ownership and 10-K. (Use separate page if needed and include as Exhibit 1C.)

Name (list first, middle & last):
Home Address (incl.zip code)

Office Held

Percent
Ownership

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

All parties of the applicant who have an interest in any other tax abatement agreement or any other contract or agreement in force and effect with the City of Newark are:

Name

Name of Corporation

Nature of Agreement

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Owner of Site: _____ Address: _____

Phone Number: _____

Responsible Parties:

FIRM	NAME	TEL. NO.
_____	_____	_____
_____	_____	_____
_____	_____	_____

IF APPLICANT IS OTHER THAN OWNER:

I HEREBY AUTHORIZE _____ TO ACT AS MY AGENT IN SUBMITTING THIS APPLICATION.

Owner's Signature: _____ Date: _____

If the applicant is not now the owner of the site, does the applicant have an option to purchase the site? ____ no.
____ yes If yes, please indicate:

- date the option or contract was signed with owner: _____
- the purchase price of the site \$ _____
- the expiration date of the option or contract: _____
- Please attach executed copy of the option agreement or contract as Exhibit 1-D.

Legal Counsel:	_____	_____	_____
	Name	Address	Phone Number
Architect/Engineer:	_____	_____	_____
	Name	Address	Phone Number
General Contractor:	_____	_____	_____
	Name	Address	Phone Number

B. SITE DESCRIPTION

Address: _____ Block(s): _____ Lot(s): _____

Existing Zoning: _____

Size (in acres or square feet of land): _____

Present Use: _____

Area there any buildings now on the site? ____ yes ____ no

If yes, indicate number, approximate size in square feet and condition of each building:

If the site of the proposed redevelopment covers more than one lot on the current tax assessment map, the applicant hereby represents to the City of Newark that application will simultaneously be made to the Tax Assessor in writing for a merger of the lots into one or more lots, as proper land assessment requires. Applicant's failure to make such petition shall permit the assessor to make a merger of lots in a manner deemed appropriate to him and the applicant shall be bound thereby and to the merger's effective date and the valuation of the land.

C. SITE CONTAMINATION *(Attach remediation workplan or other information)*

Describe nature and magnitude of known contamination on the property and proposed remedial activities:

D. SUMMARY OF PROPOSED REDEVELOPMENT *(Include attachments, if necessary)*

Describe the purpose of the planned redevelopment and impact on existing and planned infrastructure. Indicate anticipated uses and the number and size of new buildings or renovations to existing buildings planned.

E. EMPLOYMENT IMPACT

Indicate below the projected number of people that will be employed at the site, at the end of the second year after the redevelopment has been completed (do not include construction workers). All projections should be accurate, conservative and achievable. All figures should be based upon full-time employees working more than 30 hours per week.

<u>Type of Employment</u>	<u>Number of Employees</u>
Professional, Managerial, Technical	<hr/>
Skilled, Semi-Skilled	<hr/>
Unskilled	<hr/>
Remediation labor	<hr/>
TOTAL	<hr/>

F. PROJECTED COSTS (Include attachments, if necessary)

<u>Item</u>	<u>Amount</u>	<u>Anticipated Completion Date</u>
Acquisition of Land	\$ _____	_____
Acquisition of Existing Buildings	_____	_____
Remediation Activities:		
Preliminary Assessment	_____	_____
Site Investigation	_____	_____
Remedial Investigation	_____	_____
Remedial Actions (specify)	_____	_____
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____
4. _____	_____	_____
5. _____	_____	_____
Redevelopment Activities		
Construction of New Buildings or Additions	_____	_____
Construction of Road, Utilities, etc.	_____	_____
Engineering and Architectural Fees	_____	_____
Finance Fees	_____	_____
Accounting Fees	_____	_____
Legal Fees	_____	_____
Working Capital	_____	_____
Contingency	_____	_____
TOTAL PROJECTED COSTS	\$ _____	

Method of Financing (Specify both construction and permanent)

<u>Permanent Financing Source</u>	<u>Amount</u>
_____	\$ _____
_____	_____
_____	_____
_____	_____
TOTAL COSTS	\$ _____

<u>Construction Financing Source</u>	<u>Amount</u>
_____	\$ _____
_____	_____

G. DEVELOPMENT EXPERIENCE

(Include attachments, if necessary)

Describe the development experience of the applicant and its principals. List addresses, cost, type, size and completion date or status of projects:

I affirm that the construction of the redevelopment has not commenced, nor will it commence prior to the final approval and execution of a Financial Agreement between the City and the developer.

I affirm that no officer or employee of the City of Newark has any interest, direct or indirect in the remediation project or the proposed commercial or industrial establishment, which is the subject of this application.

I affirm that I am familiar with Ordinance Title 10, Chapter 16 of the City of Newark "Tax Exemption for qualified Real Property as an Environmental Opportunity Zone"

I affirm, represent and warrant that the information contained in this application and in all attachments submitted herewith is to the best of my knowledge true and complete. I understand that if such information is willfully false, I am subject to criminal prosecution and civil action and that the City of Newark may at its option terminate processing this application.

Applicants Affirmative Action Plan which complies with the affirmative action requirements of the City of Newark is attached.

Signature: _____

Name (Print): _____

Title: _____
Officer/Owner Date

**Environmental Opportunity Zone Act
N.J.S.A. 54:4-3.150 et. seq.**

Re: _____

PREAMBLE

THIS FINANCIAL AGREEMENT, (hereinafter "Agreement") made this day

_____, 19__ by and between

having its principal office at

hereinafter also designated as the "Entity", and the City of Newark, a Municipal Corporation in the County of Essex and the State of New Jersey, hereinafter designated as the "City".

RECITALS

WITNESSETH:

WHEREAS, the Entity wishes to have an Environmental Opportunity Zone Act Tax Abatement (hereinafter "EOZ Tax Abatement") granted for a property located at:

(hereinafter called the "Property" or "Qualified Real Property"); and

WHEREAS, the City does hereby grant the EOZ Tax Abatement for the Property to be undertaken upon the terms and conditions hereinafter set forth:

NOW, THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, it is mutually covenanted and agreed as follows:

ARTICLE I - GENERAL PROVISIONS

Section 1.1 Governing Law

This Agreement shall be governed by the provisions of the Environmental Opportunity Zone Act, as amended and supplemented, (N.J.S.A. 54:4-3.150 et. seq.) and Newark Municipal Ordinance, Title 10, Finance and Taxation, Chapter 16, being referred to herein as the "Law". It is expressly understood and agreed that the City expressly relies upon the facts, data, and presentations contained in the Application attached hereto in granting this EOZ Tax Abatement.

Section 1.2 General Definitions

Unless specifically provided otherwise or the context otherwise requires, the following terms when used in this Agreement shall have the following meaning:

Administrative Consent Order or "ACO" means an administrative order issued by the New Jersey Department of Environmental Protection which is consented to by one or more parties; and may be in the form of a Memorandum of Understanding at the Department's discretion.

"Application" means the entirety of the information required to be submitted by an Applicant seeking an EOZ Tax Abatement pursuant to this Ordinance.

"City" means the municipal government of the City of Newark, State of New Jersey.

"City Council" means the Municipal Council of the City of Newark, New Jersey.

"Default" - means the failure of the Entity to perform any obligation imposed upon the Entity by the terms of this Agreement.

"Division of Tax Abatement and Special Tax" means the Division of Tax Abatement and Special Tax within the Department of Finance that shall manage tax abatements and special taxes.

"Entity" means any person including, without limitation, an owner, contract purchaser, option purchaser or lessee that has obtained an EOZ Tax Abatement pursuant to this Ordinance. An Entity can also include an assignee or successor to any such person with written approval of the Municipal Council.

"Environment Opportunity Zone (EOZ)" means any qualified real property that has been designated as an environmental opportunity zone by the City pursuant to this Ordinance, approving the application.

"In Rem Tax Foreclosure" means a summary proceeding by which the City may enforce the lien for taxes due and owing by a tax sale. Said foreclosure is governed by N.J.S.A. 54:5-1 et. seq.

"Law" means the Environmental Opportunity Zone Act, as amended and supplemented (N.J.S.A. 54:4-3.150 et. seq.); Newark Revised Ordinance, Title 10, Finance and Taxation, Chapter 16, as amended and supplemented, and all other relevant federal, state and municipal statutes, ordinances, resolutions, rules and regulations.

"Memorandum of Agreement" or "MOA" means a written agreement between NJDEP and one or more developers concerning the Department's oversight of remediation at qualified real property.

"Memorandum of Understanding" or "MOU" means an oversight document issued by the Department to a public entity, similar in form to an ACO, but without the stipulated penalties and financial assurance provisions.

"NJDEP" or "Department" means the New Jersey Department of Environmental Protection.

"No Further Action (NFA) letter" means a written determination by the Department that based upon an evaluation of the historic use of a particular site, or of an area of concern or areas of concern at that site, if applicable, and any other investigation or action the Department deems necessary, there are no discharged contaminants present at the site, at the area of concern or areas of concern, at any other site to which a discharge originating at the site has migrated, or that any discharged contaminants present at the site or have migrated from the site have been remediated in accordance with applicable remediation regulations.

"Property" means the land and the improvements therein as disclosed in the Application.

"Qualified real property" means any parcel of real property that is now vacant or underutilized, which is in need of a remediation due to a discharge or threatened discharge of a contaminant, and which is listed in the most recent NJDEP publication of Known Hazardous Discharge Sites in New Jersey prepared pursuant to P.L. 1982, c.202 (C. 58:10-23.15 et seq.);

"Real property taxes otherwise due" means the taxes due on the property if there were no Environmental Opportunity Zone.

"Remediation" means all necessary actions to investigate and clean up any known, suspected, or threatened discharge of contaminants, including, as necessary, the preliminary assessment, site investigation, remedial investigation, and remedial action.

"Remediation cost" means cost associated with the development and implementation of remediation, including all direct and indirect legal, administrative and capital costs, engineering costs, and annual operation, maintenance and monitoring costs.

"Tax Arrears" mean all real property tax, sewer and water charges, payroll taxes, parking taxes, license payments, payments in lieu of taxes, municipal liens and any other charges, taxes and fees due and owing to the City from the Entity or the Property.

"Tax Assessor" means the municipal tax assessor appointed pursuant to the provisions of Chapter 9 of Title 40A of the New Jersey Statutes.

ARTICLE II - APPROVAL

Section 2.1 Approval of the EOZ Tax Abatement

The City has granted and does hereby grant its approval for an EOZ Tax Abatement to be maintained under the provisions of the Law for the Property described in the Application, commonly known on the Official Tax Map (year 19) of the City of Newark, New Jersey as:

Section 2.2 Approval of the Entity

Approval hereunder is granted to the Entity for the contemplated Remediation Project to be conducted at the Property and the proposed commercial or industrial establishment to be operated thereon, which shall in all respects comply and conform with all applicable statutes of the State of New Jersey and Ordinances of the City of Newark as amended and supplemented, and the lawful regulations made pursuant thereto governing the remediation of land and water and the construction and use of building(s).

ARTICLE III - DURATION OF AGREEMENT

Section 3.1 Term

So long as there is compliance with the Law and this Agreement, it is understood and agreed by the parties hereto that this Agreement shall remain in effect for ten (10) years from the date of the City Ordinance approving this EOZ Tax Abatement, or until the difference between real property taxes otherwise unless due and payments made in lieu of real property

taxes equals or exceeds the total remediation cost for the qualified real property, whichever comes first.

ARTICLE IV - PAYMENTS IN LIEU OF TAX

Section 4.1 Taxes Otherwise Due.

- a) Property taxes due for the current tax year are as follows:

	ASSESSED VALUE	YEARLY ASSESSMENT	QUARTERLY ASSESSMENT
Land			
Improvements			
Total Assessment			

- b) The Taxes Otherwise Due for the Property is calculated as follows:

(Assessed Land + Assessed Improvements) x Tax Rate = Taxes Otherwise Due

- c) The "Tax Rate" is established yearly by the City and it may be amended from time to time as the City deems appropriate.

Section 4.2 Payments in Lieu of Tax.

- a) So long as there is compliance with the Law and this Agreement, the Entity shall pay quarterly to the City an amount in lieu of real property taxes as follows:
- 1) In the first tax year following execution of a Memorandum of Agreement ("MOA") or Administrative Consent Order ("ACO"), no payment in lieu of taxes otherwise due shall be paid to the City. Instead, 100% of the taxes otherwise due shall be paid toward remediation
 - 2) In the second tax year following execution of an MOA or ACO, 10% of the taxes otherwise due shall be paid to the City and 90% of the taxes otherwise due shall be paid toward remediation.

- 3) In the third tax year following execution of an MOA or ACO, 20% of the taxes otherwise due shall be paid to the City and 80% of the taxes otherwise due shall be paid toward remediation.
 - 4) In the fourth tax year following execution of an MOA or ACO, 30% of the taxes otherwise due shall be paid to the City and 70% of the taxes otherwise due shall be paid toward remediation.
 - 5) In the fifth tax year following execution of an MOA or ACO, 40% of the taxes otherwise due shall be paid to the City and 60 % of the taxes otherwise shall be paid toward remediation.
 - 6) In the sixth tax year following execution of an MOA or ACO, 50% of the taxes otherwise due shall be paid to the City and 50 % of the taxes otherwise due shall be paid toward remediation.
 - 7) In the seventh tax year following execution of an MOA or ACO, 60% of the taxes otherwise due shall be paid to the City and 40 % of the taxes otherwise due shall be paid toward remediation.
 - 8) In the eighth tax year following execution of an MOA or ACO, 70% of the taxes otherwise due shall be paid to the City and 30% of the taxes otherwise due shall be paid toward remediation.
 - 9) In the ninth tax year following execution of an MOA or ACO, 80% of the taxes otherwise due shall be paid to the City and 20% of the taxes otherwise due shall be paid toward remediation.
 - 10) In the tenth tax year following execution of an MOA or ACO, the EOZ Tax Abatement shall expire and the full amount of the assessed real property taxes, taking into account the value of the real property in its remediated state, shall be due.
- b) For the purposes of this section only, the amount of "taxes otherwise due" shall be determined by using the assessed valuation of the environmental opportunity zone at the time of the approval by the assessor of the exemption, regardless of any improvements made to the environmental opportunity zone thereafter.

Section 4.3 City Adjustment to PILOT

The Tax Assessor shall notify the Tax Collector and the Division of Tax Abatement and Special Taxes in writing that this EOZ Tax Abatement Agreement has been executed so as to insure the commencement of such payments in lieu of taxes as herein agreed upon by the parties.

Section 4.4 Material Conditions

It is expressly agreed and understood that all PILOT and/or water and sewer charges, and any interest payments due, are material conditions of this Agreement. In the event that any of the provisions which apply to the payment of PILOT and/or water and sewer charges as provided for in this Agreement are judicially declared to be invalid or unenforceable, then this EOZ Tax Abatement and Agreement shall terminate upon notice to the respective parties. If any other term, covenant or condition of this Agreement or the Application, to any person or circumstance and to any extent be found invalid or unenforceable, except as to the material conditions defined herein, the remainder of this Agreement or the Application of such term, covenant or condition to persons or circumstances, other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid and enforced to the fullest extent permitted by law.

ARTICLE V - DISPUTE RESOLUTION

In the event of a breach of this Agreement by either of the parties hereto or a dispute arising between the parties in reference to the terms and provisions as set forth herein, other than those items specifically identified as Material Conditions herein, either party may apply to the Superior Court of New Jersey by an appropriate proceeding or the American Arbitration Association to settle and resolve said dispute in such fashion as will tend to accomplish the purposes of the act known as the "Environmental Opportunity Zone Act", as amended and supplemented. Cost for litigation or arbitration shall be borne equally by the

parties. The parties agree that the breach of those items specifically mentioned in Section 4.5 as Material Conditions shall not be subject to a determination of the Superior Court or the Arbitration Association.

ARTICLE VI - INSPECTION

The Entity shall permit the inspection of the Property and equipment and buildings located thereon. It also shall permit, upon request, examination and audit of its books, contracts, records, documents and papers by representatives duly authorized by the City. Such examination or audit shall be made during reasonable hours of the business day, in the presence of any officer or agent of the Entity.

ARTICLE VII - ASSIGNMENT AND/OR ASSUMPTION

Section 7.1 Approval

Any change made in the ownership of the Property or which would materially affect the terms of the Agreement shall be void unless approved by the Municipal Council by resolution. It is understood and agreed that the City, upon written application by the Entity, will not unreasonably withhold its consent to a sale of the Property or the commercial or industrial establishment located thereon, and the transfer of this Agreement to an Entity eligible to operate under the Law, provided the Entity is not in default regarding any performance required of it hereunder and the Entity's obligation under this Agreement with the City is fully assumed by the transferee.

Section 7.2 Fee

Where the consent or approval of the City is sought for an assignment of the Agreement, the Entity shall be required to pay to the City a fee of \$2,000 for the legal services of the City's Law Department, as it relates to the review; preparation, and/or submission of documents to the Municipal Council for its appropriate action on the requested assignment.

ARTICLE VIII - WAIVER

Nothing contained in this Agreement or otherwise shall constitute a waiver or relinquishment by the City of any rights and remedies, including without limitation, the right to terminate the Agreement and EOZ Tax Abatement for violation of any of the conditions provided herein. Nothing herein shall be deemed to limit any right of recovery of any amount which the City has under law, in equity, or under any provisions of this Agreement.

ARTICLE IX - NOTICE

Section 9.1 Sent by City

Any notice required hereunder to be sent by any party to the other shall be sent by certified or registered mail, return receipt requested, addressed as follows:

Entity: *(enter name and address here)*

Section 9.2 Sent by Entity

When sent by the Entity to the City, it shall be addressed to the City Clerk, City Hall, Newark, New Jersey 07102, with copies sent to the Corporation Counsel, the Tax Assessor, the Director of Finance and the Manager of Tax Abatement and Special Taxes, unless prior to the giving of notice the City shall have notified the Entity otherwise. The notice to the City shall intelligently identify the subject to which it relates, (i.e the Block and Lot number of the Property.)

ARTICLE X - CONSTRUCTION

This Agreement shall be construed and enforced in accordance with the laws of the State of New Jersey, and without regard to or aid of any presumption or other rule requiring construction against the party drawing or causing this Agreement to be drawn since counsel for both the Entity and the City have combined in their review and approval of same.

ARTICLE XI - WASTE AND REFUSE DISPOSAL

Section 11.1 Responsibility of Entity

Collection and disposal of all solid waste, refuse and recyclables emanating from the Property shall be the responsibility of the Entity to have picked-up and disposed of by a licensed collector, hauler or scavenger, at the Entity's cost and expense. The Director of the Department of Engineering may establish regulations for the collection and for the storage and recycling of solid waste, discarded or old newspaper and/or other recyclables; compliance therewith shall be by, and at the expense, of the Entity.

The Entity shall comply with the City's Mandatory Recycling Ordinance to ensure that used corrugated cardboard, glass bottles and jars, food and beverage cans, newspapers and magazines and other recyclables deemed mandatory by the City are separated from waste and refuse for the purpose of recycling. It shall be the responsibility of the Entity to have the recyclables picked up and disposed of by a licensed collector, hauler or scavenger, at the Entity's cost and expense, for the purpose of recycling. The Entity shall ensure that the tonnage for recyclable materials collected is documented and reported annually, January 1st of each year, to the City's Office of Recycling, concerning waste disposal requirements which are utilized in all tax exemption agreements.

The Entity shall post a sign which states clearly and legibly the following information; business name, address, telephone number and day and time of the private refuse collection. Such sign shall be prominently displayed by affixing it to the inside of a window, near the principal entrance of the Entity or the project's building(s) so as to be easily visible from outside the structure. If this is not possible, such sign shall be prominently displayed inside, near the principal entrance.

ARTICLE XII - INDEMNIFICATION

It is understood and agreed that in the event the City shall be named as party defendant in any action brought against the Entity by reason of any breach, default or violation of any of the provisions of the within Agreement and/or the provisions of the Law, the Entity shall indemnify and hold the City harmless, and the Entity agrees to defend the suit at its own expense. However, the City maintains the right to intervene as a party thereto, to which intervention the Entity consents; the reasonable expense thereof to be borne by the Entity.

ARTICLE XIII - DEFAULT

Section 13.1 Default

Default shall be failure of the Entity to conform with the terms of the Agreement herein and failure of the Entity to perform any obligation imposed upon the Entity by statute, ordinance or lawful regulation. Specific events of default include the following:

- a) The Entity's failure to make the requisite PILOT, and/or sewer and water charge payments in a timely manner shall constitute a violation and breach of the Agreement and the City shall, among its other remedies, have the right to proceed against the Property pursuant to the In Rem Tax Foreclosure Act, N.J.S.A. 54:5-1, and/or may cancel the Agreement upon thirty (30) days notice to the Entity. Any default arising out of the Entity's failure to pay the requisite PILOT, and/or water and sewer charges, shall not be subject to the dispute resolution procedures provided in Section 5.1 of the Agreement.
- b) The Entity's failure to maintain an MOA or ACO with the Department for the Property during the term of this Agreement shall be a breach of the Agreement.
- c) It is an express condition of the granting of this EOZ Tax Abatement that during its duration the Entity shall not, without the prior consent of the Municipal Council, convey, mortgage or transfer, all or part of the Property or commercial or industrial establishment so as to sever, disconnect, **or divide** the improvements from the lands

which are basic to, embraced in, or underlying the EOZ Tax Abatement. To do so is a breach of this Agreement.

Section 13.2 Cure Upon Default

Should the Entity be in default as defined and set forth in this agreement, the City shall notify the Entity in writing of said default. Said notice shall set forth with particularity the basis of said default. The Entity shall have thirty (30) days to cure any default which shall be the sole and exclusive remedy available to the Entity to cure said default. Subsequent to the thirty (30) days, the City shall have the right to proceed against the property pursuant to the In Rem Tax Foreclosure Act, N.J.S.A. 54:4-1, et. seq. and/or may cancel the Agreement upon thirty (30) days notice to the Entity.

Section 13.3 Remedies Upon Default

All of the remedies provided in this Agreement to the City, and all rights and remedies granted to it by law and equity shall be cumulative and concurrent. No determination of any provision within this Agreement shall deprive the City of any of its remedies or actions against the Entity because of its failure to pay the requisite PILOT, and/or water and sewer charges and interest payments. This right shall apply to arrearages that are due and owed or which, under the terms hereof, would in the future become due as if there had been no determination, nor shall the bringing of any action for land taxes or other charges, or for breach of any covenant or the resort of any other remedy herein provided for the recovery of land taxes, water and sewer charges, or other charges be construed as a waiver of the right to terminate this Agreement or proceed with an In Rem Foreclosure action or any other specified remedy.

ARTICLE XIV- TERMINATION

In the event the Entity fails to cure or remedy such default or breach within the time period provided in Section 13.2, the City may cancel this Agreement upon thirty (30) days notice to the Entity. It is further provided that at the termination of the period of the EOZ Tax Abatement granted hereunder, the Property shall be assessed and taxed according to general law like other property in the City.

In the event that the Entity transfers, sells, demises, conveys, or in any manner relinquishes ownership or title to the land and improvements covered by this EOZ Tax Abatement to a tax exempt non-profit organization or institution or church during the term of the EOZ Tax Abatement, it is understood and agreed by the Entity that it shall pay to the City a sum equal to the total taxes which would have been assessed on all real estate (land and improvements) for the three (3) years preceding the transfer of the Property.

Section 14.1 Duration of Agreement

This Agreement provides for a property tax exemption of up to fifteen years, or until the difference between real property taxes otherwise due and payments made in lieu equals or exceeds the total remediation cost for the qualified real property, whichever comes first.

ARTICLE XV - MISCELLANEOUS

Section 15.1 Conflict

The parties agree that in the event of a conflict between the Application, the language contained in this Agreement shall govern and prevail.

Section 15.2 Entire Document

There have been no oral representations made by either of the parties hereto which are not contained in this Agreement. This Agreement, the Municipal Ordinance authorizing the Agreement, and the Application constitute the entire Agreement between the parties and there

shall be no modifications thereto other than by a written instrument executed by both parties and delivered to each.

Section 15.3 Good Faith

In their dealings with each other, utmost good faith is required from the Entity and the City.

Section 15.4 Grammatical Agreement

The bracketing of the letter "s" at the end of a word such as unit(s) shall mean the singular or plural as proper meaning requires and all related verbs and pronouns shall be made to correspond.

Section 15.5 Pronouns

"He" or "it" shall mean the masculine, feminine or neuter gender, the singular, as well as, the plural, as proper meaning requires.

ARTICLE XVI - EXHIBITS

The following Exhibits are attached hereto and made a part hereof:

- 1) Exhibit 1 – Application for EOZ Tax Abatement.
- 2) Exhibit 2 - Ordinance from the City Council approving this EOZ Tax Abatement.

IN WITNESS WHEREOF, the parties have caused these presents to be executed
the day and year first above written.

ATTEST:

ENTITY

Secretary

Signature

Print Name

Title

APPROVED AS TO FORM AND LEGALITY

THE CITY OF NEWARK

Corporation Counsel

City Clerk

Document #: